

# HOUSE BILL REPORT

## SSB 5234

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### As Reported By House Committee On:

Criminal Justice & Corrections

**Title:** An act relating to custodial sexual misconduct.

**Brief Description:** Defining the crime of custodial sexual misconduct.

**Sponsors:** Senate Committee on Judiciary (originally sponsored by Senators Long, Horn, Kline, Gardner, McCaslin, Zarelli, Roach, Hargrove, Kohl-Welles, Haugen, Franklin, Stevens, Thibaudeau, Oke, Winsley, Costa and Benton; by request of Department of Corrections).

### Brief History:

#### Committee Activity:

Criminal Justice & Corrections: 3/30/99, 4/2/99 [DP].

#### Brief Summary of Substitute Bill

- Creates a new crime of custodial sexual misconduct « in the first degree as a class C felony and, in the second degree, as a gross misdemeanor.
- Adds the crime of custodial sexual misconduct to the list of crimes considered "crimes against children and other persons" for disclosure purposes in background checks.
- Includes custodial sexual misconduct in the definition of sexual assault for the purposes of programs under the Victims of Sexual Assault Act.

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## HOUSE COMMITTEE ON CRIMINAL JUSTICE & CORRECTIONS

**Majority Report:** Do pass. Signed by 8 members: Representatives Ballasiotes, Republican Co-Chair; O'Brien, Democratic Co-Chair; Cairnes, Republican Vice Chair; Lovick, Democratic Vice Chair; B. Chandler; Constantine; Kagi and Koster.

**Staff:** Jean Ann Quinn (786-7310).

### Background:

Custodial Sexual Misconduct: Under existing law, there is no specific crime making it unlawful for a correctional or law enforcement officer to have consensual sexual intercourse or sexual contact with a person detained, arrested, or otherwise in custody.

Background Checks: Applicants for paid or volunteer positions that will or may have access to children under 16 years of age, developmentally disabled persons, or vulnerable adults are subject to background checks including checks for crimes against children or other persons.

Programs under the Victims of Sexual Assault Act: Under the Victims of Sexual Assault Act, the Department of Community, Trade, and Economic Development coordinates activities of programs relating to sexual assault, and aids organizations that provide services to sexual assault victims, such as rape crisis centers and other community-based sexual assault programs.

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**Summary of Bill:**

Custodial Sexual Misconduct: A new crime of custodial sexual misconduct is created. The victim must be a resident of a state, county, or city adult or juvenile correctional facility, or under correctional supervision. The perpetrator must be an employee or contract personnel of a correctional agency and have, or the victim must reasonably believe that the perpetrator has, the ability to influence the victim's terms, conditions, length, or fact of incarceration or correctional supervision. Victims who are detained, under arrest, or in the custody of law enforcement are also included when the perpetrator is a law enforcement officer.

Sexual intercourse under these circumstances is custodial sexual misconduct in the first degree, a class C (level V) felony. Sexual contact is custodial sexual misconduct in the second degree, a gross misdemeanor. The terms "sexual intercourse" and "sexual contact" are defined in RCW Chapter 9A.44.

Consent of the victim is not a defense. But an affirmative defense is created if the sexual intercourse or sexual contact is the result of forcible compulsion by the other person.

The Department of Corrections must, before reporting to the prosecuting attorney an incident of custodial sexual misconduct alleged to have been committed by an employee or contract personnel of that department, conduct an investigation to determine whether there is probable cause to believe that the allegation is true.

Background Checks: Custodial sexual misconduct is added to the list of crimes that are considered "crimes against children and other persons" for the purposes of disclosure in background checks.

Programs under the Victims of Sexual Assault Act: Custodial sexual misconduct is added to the list of offenses included in the definition of sexual assault for the purposes of the Victims of Sexual Assault Act.

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**Appropriation:** None.

**Fiscal Note:** Requested on March 24, 1999.

**Effective Date:** Ninety days after adjournment of session in which bill is passed.

**Testimony For:** There can be no consensual sex in the correctional setting for the obvious reason that one person has so much power over the other. These situations are currently being handled through the administrative process, but harsher penalties should exist for people who use their power so inappropriately in the workplace.

**Testimony Against:** None.

**Testified:** Senator Long, prime sponsor; and Belinda Stewart, Department of Corrections.